IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO : 9828 of 2004

Between:

1. M/S. Minwool Rock Fibers Ltd., rep. by its Managing Director, Sri R.K.Badruka S/o. S.G. Badruka, having its corporate & Administrative Office at Road No.10, Banjarahills, Hyderabad.

2. Sri R.K. Badruka S/o. S.G.Badruka, Managing Director, Minwool Rock Fibers Limited, R/o. Hyderabad.

..... PETITIONERS

AND

1. M/s. Bharat Heavy Electricals Limited, rep. by Chairman, BHEL House Siri Fort, New Delhi-110049.
2. M/s. Bharat Heavy Electricals Limited, rep. by the Executive Director, Tiruchirapalli, Tamil Nadu - 620 014.
3. M/s. Bharat Heavy Electricals Limited, rep. by its General Manager, Tiruchirapalli, Tamil Nadu-620 014.
4 M/s. Bharat Heavy Electricals Limited, rep. by Dy. General Manager/SD, SDC & Admn.(MM/FB), Tirichiraplli, Tamil Nadu-620-014.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or orders more particularly in the nature of writ of Mandamus, declaring the action of the Respondents in issuing letter No. SDC/60350 Dt. 29.3.2004 as illegal, arbitrary, oppose to the principle of natural justice and violative of Articles 14, 19 and 20 of the Constitution of India and Consequently direct the Respondent to release undisputed outstanding amount of Rs. 94,21,303/- (Rupees Ninety four lakh twenty one thousand three hundred and three only) forthwith.

Counsel for the Petitioners: MR.GUMMALLA.VIJAYA KUMAR

Counsel for the Respondents: MR.S.V.BHATT

The Court made the following :

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THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 9828 of 2004

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Oral order:

Though the writ petition is listed under the caption "for admission", but as the respondents filed their counter, both the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents-BHEL argued and consented for disposal of the writ petition finally.

The petitioner is one of the approved vendors of the respondents for supplying light bonded mineral rock/slag wool mattresses (referred to as 'material') to the customers of the respondents. The petitioner states that they have been supplying material to the customers of the respondents for the last 12 years without any complaint whatsoever. Pursuant to an inquiry dated 11-12-2002 floated by the respondents for supply of material to their Trichy unit, the petitioner offered their quotation, and after negotiations between the officials of the petitioner and the respondents, rate contract, vide the reference of the respondents dated 22-8-2003, for supply of 5529 MTS of material upto 31-8-2005 was finalized, which was made applicable for the orders to be placed by the petitioner to the units of the respondents at Chenni, Ranipet and Trichi. In pursuance thereof, the units of the respondents at Chennai, Ranipet and Trichi, placed Purchase Orders on the petitioner for supply of 1859 MTS of material. The petitioner states that the material supplied by them was inspected by the quality control team of the respondents and NTPC, and only if the material supplied is, as per the specifications, the Material Dispatch Clearance Certificate is issued, and then only the material would be used by NTPC, the customer of the respondents. The petitioner states that 684 MTS of material supplied by them was inspected by the quality control team of the respondents and NTPC on 11-8-2003 and 13-8-2003 and found no defects therein. That, they in all supplied 1527 MTS of material, and while they are still to supply balance material of 332 MTS, the petitioner states that they were orally informed by the respondents not to make supplies in view of the ban imposed. While so, the petitioner states that the

Purchase Manager of the respondents vide his letter dated 20-11-2003 informed the petitioner that on surprise random check made by them at the site of the recent supplies to NTPC, it was found that the wire netting diameter measured between o.45 mm and 0.57 mm as against the specified wire netting diameter of 0.711 mm and requested the petitioner to take remedial measures, else the petitioner would be blacklisted from the approved vendors list of the respondents, and that they would deduct the difference of amount in the wire netting cost as against the supplies made by the petitioner to NTPC. In response thereto, the petitioner states that they addressed several letters explaining the reasons. However, the respondents by their letter dated 29-3-2004 imposed a ban on all business dealings with the petitioner for a period of one year with effect from 19-2-2004. It is this letter, which the petitioner seeks to call in question in this writ petition.

On behalf of respondents, particularly respondent Nos. 3 and 4, the Deputy General Manager of the Tiruchirapalli unit of the respondents filed counter-affidavit stating that the petitioner have not made out any ground for grant of any relief, much less the relief prayed for in the writ petition.

It is stated that, on 22-7-2003, the respondents placed Purchase Order with the petitioner for supply of the material mentioned therein, and the petitioner was required to deliver the said material at the Talcher Project of NTPC. In terms of the said Purchase Order, the petitioner supplied the material at Talcher Project, and vide their letter dated 11-8-2003, they made available to the respondents a Test Certificate dated 17-7-2003 as regards the material supplied by them. Though, no physical verification of the material supplied by the petitioner was carried out by the respondents or NTPC, it is stated that the responsibility of supplying material as per the specification is on the petitioner. Thereafter, on 22-8-2003, a common rate contract was entered into by the respondents with the petitioner. By letter dated 8-9-2003, the respondents called upon the petitioner to supply the material strictly in accordance with the terms and conditions of the Purchase Order and that the petitioner would be responsible for the deviations, if any, in the supplies to be made by them.

While the matters stood so, the deponent states that their Additional General Manager (Vigilance) on 1-11-2003 forwarded a confidential report dated 1-11-2003 as regards the thickness of the wire mesh supplied by the petitioner at the Talcher Project of NTPC. The said report indicated that the material supplied by the petitioner was of substandard quality. Having regard to the said letter and report, they vide their letter dated 20-11-2003 brought to the notice of the petitioner that the material supplied by them is of substandard quality and that the wire netting diameter measured between 0.45 mm and 0.57 mm as against the wire netting specification diameter of 0.711 mm, and that such practice is unethical, and called upon the petitioner to take remedial steps to ensure future supplies strictly as per the specification requirement, else the matter will be viewed seriously and may even lead to the blacklisting of the petitioner from the list of approved vendors, and they further informed the petitioner that they would deduct the difference in the wire netting cost from their pending bills. The act of the petitioner in supplying substandard quality of material, according to the respondents is unethical and

amounts to indulging in unfair means and malpractice, resulting in making unlawful gain. It is stated that the petitioner having received the aforesaid letter, admitted the lapses by their letter dated 3-1-2004 and 27-1-2004, and taking into consideration the admissions of the petitioner and the totality of the facts and circumstances of the case, they issued the impugned letter on 29-3-2004, imposing business dealings with the petitioner for one year. Even after the impugned letter came to be issued, there was an adverse report against the petitioner dated 8-6-2004, as regards the supplies made by them at the Ramagundam site, and that they are contemplating to take appropriate action against the petitioner after receiving the explanation of the petitioner, if any.

It is stated that the steps taken by them to blacklist the petitioner was in accordance with the Purchase Policy of the respondents and the directives issued by the Vigilance Department from time to time, which state that those vendors who engaged in malpractice are to be banned for a minimum period of one year. Since the petitioner by supplying substandard quality of material indulged in unfair means and malpractice, which is admitted to by the petitioner themselves in their replies submitted to the respondents, no exception can be taken to the issuance of the impugned letter. There is no violation of principles of natural justice in the issuance of the impugned letter, particularly when the respondents issued the impugned letter after considering the replies of the petitioner dated 3-1-2004 and 27-1-2004 to their letter dated 20-11-2003. The petitioner suppressing the factum of the replies submitted by them, in which they had admitted of the lapses in the supplies made, filed the present writ petition, and it warrants no interference. The factum of the inferior quality of material supplied by the petitioner, is further vindicated by the latest vigilance report in relation to the supplies made by the petitioner at the Ramagundam site, which also reported of the substandard quality of material supplied by the petitioner. The petitioner with an intention to make wrongful gain and defraud the respondents, resorted to supplying of substandard quality of material. Since the petitioner did not replace the substandard quality of material supplied, they deducted the difference of amount from the pending bills of the petitioner, and the balance amount, if any, payable to the petitioner, would be paid only after making a thorough inspection of the material supplied by the petitioner. He thus prayed that the writ petition be dismissed.

The petitioner filed a detailed reply to the counter-affidavit of the respondents disputing the amounts that are liable to be deducted from their pending bills. It is stated that the respondents have not disputed the Test Certificate produced by them, warranting issuance of the impugned letter in accordance with the guidelines of their Vigilance Department. It is stated that since the petitioner in response to the letter dated 20-11-2003 of the letter of the Purchase Manager of the respondents vide their letters dated
3-1-2004 and 27-1-2004 had replied that they would replace the defective material and take remedial steps for supply of good quality material at their end, the respondents ought not to have issued the impugned letter unilaterally imposing ban on business dealings with them.

The learned counsel for the petitioner submitted that even assuming that the material supplied by the petitioner is defective, there being a clause in the contract agreement which requires the petitioner to replace the defective material, and envisages deduction of amounts from the bills, there was no reason for the respondents to issue the impugned letter imposing ban on the business dealing with the petitioner. The learned counsel for the petitioner submitted that since the petitioner have in response to the letter dated 20-11-2003 of the Purchase Manager of the respondents, have vide their letters dated 3-1-2004 and 27-1-2004, replied stating that they would replace the defective material and take remedial steps for supply of good quality material, as requested by the respondents, the respondents were not justified in issuing the impugned letter unilaterally imposing ban on business dealings with them. At any rate, he submitted that since the impugned letter issued by the respondents, seeks to impose ban on the business dealings with the petitioner for a period of one year, which obviously is in the nature of blacklisting the petitioner as vendor of the respondents, the respondents could not have issued the impugned letter, without prior notice and without conducting enquiry and without providing opportunity of being heard to the petitioner. He submits that the impugned letter, blacklisting the petitioner as vendor of the respondents, having been issued without any prior notice and opportunity of being heard to the petitioner, the same cannot be sustained for it suffers from the vice of violation of principles of natural justice, and in support of his submission that before blacklisting a vendor from participating in tenders, prior notice and opportunity of hearing should be given, he placed strong reliance on the judgement of the apex Court in **M/S. Southern Painters v. Fertilizers & Chemicals Travancore Ltd.**. He, thus prayed that the impugned letter be quashed and the writ petition allowed.

On the contrary, the learned Standing Counsel for the respondents-BHEL on the basis of the counter filed by the respondents submitted that since the dispute sprouts out of a contractual agreement between the parties, the writ petition is not maintainable. He submitted that when the certificate dated
17-7-2003 was issued, there was no physical verification of the GI wire netting of diameter 0.711 mm, made either by the respondents or NTPC. The respondents had in their e-mail addressed to the petitioner on 8-9-2003 called upon them to strictly adhere to the terms and conditions stipulated in the purchase orders and there should be no deviation whatsoever. Pursuant to the material supplied by the petitioner, the Additional General Manager (Vigilance) submitted a confidential report stating that the material supplied by the petitioner is of substandard quality and that the thickness of the wire mesh supplied by the petitioner varied between 0.45 mm and 0.57 mm. Pursuant to the said report, the respondents by their letter dated 20-11-2003 informed the petitioner that in the surprise random check of the supplies made by them to NTPC, it was found that the wire netting diameter, measured between 0.45 mm and 0.57 mm as against the wire netting specification of 0.711 mm diameter. In the said letter, the petitioner was directed to take remedial steps to ensure future supplies strictly in accordance with their specification requirements, as otherwise, they will view the matter seriously, which may even lead to blacklisting the petitioner from the approved list of vendors. Since the respondents

had in their letter dated 20-11-2003 addressed to the petitioner categorically made it clear that they should take remedial steps to ensure future supplies strictly as per their specification requirements, or otherwise, the matter will be viewed seriously, even leading to blacklisting the petitioner from the list of approved vendors, the said letter should be treated as a show cause notice to the petitioner, and more so when the impugned letter blacklisting the petitioner was issued by the respondents after considering the explanations submitted by the petitioner thereto vide his letters dated 3-1-2004 and 27-1-2004, wherein the petitioner had in no uncertain terms admitted the lapses pointed out by the respondents in their letter dated 20-11-2003 and assured of remedial steps, and therefore, the petitioner cannot complain that they were not issued any notice nor opportunity of being heard was provided nor can they complain any violation of principles of natural justice in the issuance of the impugned letter. He submitted that the stand taken by the respondents that the material supplied by the petitioner is of inferior quality is vindicated by the latest report dated 8-6-2004 relating to the supplies made by the petitioner to the respondents at their Ramagundam site, which reported that the thickness of wire mesh supplied by the petitioner is contrary to the Purchase Order. In view of this adverse report, he submits that respondents are contemplating to issue appropriate notice to the petitioner and proceed against the petitioner in the matter after receiving their explanation. He, thus prayed that the writ petition be dismissed.

There can be no dispute on the proposition of law that this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India, does not normally interfere in disputes sprouting out of contractual agreements, unless it is demonstrated that the decision-making authority had exceeded its powers or committed an error of law or committed a breach of the rules of natural justice or reached a decision which no reasonable person would have reached or abused its powers. The grounds on which an administrative action is subject to the control of judicial review by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, was classified by the apex Court in **Tata Cellular v. Union of India** as - (a) illegality, to mean a decision maker must understand correctly the law that regulates the decision making power and must give effect to it, (b) irrationality, to mean Wednesbury unreasonableness, and (c) procedural impropriety.

In the instant case, no doubt the impugned letter, issued by the respondents seeks to impose a ban on business dealings with the petitioner for a period of one year, thereby indicating termination of contractual agreement with the petitioner, but it may be noticed that the impugned letter, apart from seeking to impose business dealings with the petitioner for a period of one year, is also seeks to blacklist the petitioner from the list of approved vendors of the respondents, which is in the nature of casting a stigma on the reputation of the petitioner, affecting their relations with others in business circles. In the issuance of the impugned letter, blacklisting the petitioner, admittedly the respondents have breached the principles of natural justice, in that no notice whatsoever was issued to the petitioner calling upon them to explain as to why they should not be blacklisted, before issuing the impugned letter, nor have they conducted any enquiry, resulting in procedural irregularity. When an order having civil consequences, affecting the reputation of a person in the

society is to be passed, the same, it should be noted, should be passed only after following the principles of natural justice, in that the person against whom such an order is to be passed, should be afforded reasonable opportunity to put-forth his case, even if there be no such provision, providing for issuance of notice. In this context, a reference be made to the judgement of the apex Court in **Raghunath Thakur v. State of Bihar**, wherein it was held:

> Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. **It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.**
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> (emphasis supplied)

In **M/s. Southern Painters v. Fertilizers & Chemicals Travancore Ltd.**, the apex Court was dealing with a case where the Government of Kerala blacklisted M/s. Southern Painters from participating in the tenders without any prior notice and opportunity of being heard. The apex Court quoted the aforesaid passage with approval from its own judgement in **Raghunath Thakur v. State of Bihar**, and while upholding the plea of M/s. Southern Painters that before seeking to blacklist them from participating in the tenders, the Government of Kerala should have issued prior notice and provided opportunity of hearing, and that they should have followed the principles of natural justice, held that the High Court of Kerala was not justified in dismissing the writ petition, and while holding so, it observed thus:

> The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

In the above view of the matter, it should be held that in the issuance of the impugned letter, imposing business dealings with the petitioner, the respondents have violated the principles of natural justice.

In order to consider the contention of the respondents that the letter dated 20-11-2003 addressed by them to the petitioner should be treated as a show cause notice, and more so having regard to the explanations submitted by the petitioner there to vide their letters dated 3-1-2004 and 27-1-2004 wherein they have admitted the supply of substandard quality of material, and that therefore, the petitioner can neither complain non-issuance of notice nor say that no opportunity of being heard was provided before the impugned letter came to be issued, it would be appropriate to make a reference to the contents of the letter dated 20-11-2003 addressed by the

respondents to the petitioner, which reads as follows:

> We have made surprise random check at site in the recent supplies made by you for NTPC Talcher requirement against the above order and found that the wire netting diameter measures between 0.45 mm and 0.57 mm only as against the wire netting specification diameter of 0.711 mm. This is unethical and bad practice of supplying substandard item. You are requested to immediately take remedial steps to ensure future supply strictly as per our specification requirement or otherwise, it will be viewed very seriously and will lead to black listing you from approved vendor list of all BHEL units.
>
> With respect to the supply made so far to Talcher against the above order we are going to deduct the difference in wire netting cost from your pending bills.
>
> Please acknowledge receipt of this letter immediately indicating the remedial action proposed by you.

From a reading of the aforementioned contents of the letter dated 20-11-2003 addressed by the respondents to the petitioner, it is clear that the respondents informed the petitioner that on a surprise random check having been made by them of the material supplied by the petitioner at the NTPC Talcher site, they found that the wire netting diameter measured between 0.45 mm and 0.57 mm as against the wire netting specification requirement of 0.711 mm. The respondents feeling that it is an unethical and bad practice to supply material of substandard quality, called upon the petitioner to take remedial steps for future supplies strictly as per their specification requirement, else cautioned that the matter would be viewed seriously, which may even lead to blacklisting the petitioner from the approved vendors list. The respondents, it may be noticed, have also informed the petitioner that they would deduct the difference in wire netting cost from their pending bills.

Going by the contents of the letter dated 20-11-2003 of the respondents, it can by no stretch of imagination, be said that it is a show cause notice to the petitioner calling upon them to explain as to why they should not be blacklisted from the list of approved vendors. The said letter merely informs the petitioner that they found the material supplied by them to be of substandard quality, and called upon the petitioner to take remedial steps as against future supplies strictly as per their specification requirements, and failure to do so would be viewed seriously, which may even lead to blacklisting the petitioner from the list of approved vendors. The said letter nowhere states that it is a show cause notice, and that failure of the part of the petitioner to submit their explanation or their failure to show cause, would entail their blacklisting from the list of approved vendors. The said letter is merely in the nature of cautioning, rather warning the petitioner of extreme action if they do not take remedial steps as against future supplies. The said letter of the respondents merely administers caution and advises remedial action at the end of the petitioner for future supplies, and even though it nowhere called upon the petitioner to explain the lapses on their part or of the deviations pointed out therein, yet the petitioner as a matter of courtesy to remove any misgivings in the mind of the respondents and to maintain good business relations with the respondents sought to reply to it, and accordingly replied stating that they having identified the lapses at their end, are taking necessary corrective action to ensure quality supplies and requested to condone the lapses on their part.

May be, the petitioner had admitted the supply of substandard quality of

material in their explanations and requested to condone the lapses on their part, but it may be noticed that in the aforesaid letter, the respondents have made it clear to the petitioner that they would deduct the difference in wire netting cost from their pending bills. Since the loss, if any, suffered by the respondents by reason of the supplies made by the petitioner, was sought to be made good by the respondents by deducting the difference of amount from out of the pending bills of the petitioner, the interest of the respondents against the damage, if any, caused by the petitioner, stood safeguarded, and this apart, as against the supply of substandard quality of material by the petitioner, admittedly, there is an arbitration clause in the agreement, and if at all the respondents were aggrieved by the supplies, it was always open for them to take recourse to arbitration proceedings, to make good the damage, if any suffered by them. When the respondents sought to make good the loss, if any suffered by them, by reason of the substandard quality of material supplied by the petitioner by deducting the difference of amount from the pending bills of the petitioner, the respondents before seeking to issue the impugned letter, imposing ban on business dealings with the petitioner, which admittedly seeks to inflict a stigma and tarnish the image and reputation of the petitioner in business circles, affecting their business with others, it was incumbent upon the respondents, rather a duty was cast upon them to issue a notice calling for the petitioner to explain as to why they should not be blacklisted from their list of vendors, and mere admissions of the petitioner, purportedly said to have been made by them in their explanations to their letter, can by no means be taken and read to the disadvantage of the petitioner, and more so to besmirch their name in business circles. Therefore, the letter dated 20-11-2003 of the respondents, to which the petitioner replied vide his letters dated 3-1-2004 and 27-1-2004 can by no stretch of imagination be said to be a show cause notice preceding the impugned letter. The impugned letter having been passed without following the principles of natural justice, cannot be sustained, and it is accordingly quashed and set aside.

In the afore-mentioned premises, the writ petition deserves to be allowed, and the same is accordingly allowed, and as a corollary, the impugned letter is quashed and set aside. However, having regard to submission made by the learned Standing Counsel for the respondents that the respondents are contemplating to issue appropriate notice and proceed further in the matter after receiving the explanation of the petitioner, it is made clear that this order, would not come in the way of the respondents from issuing notice to the petitioner calling for their explanation in the matter, and after considering the same and after affording reasonable opportunity of hearing to them to put-forth their case, to pass appropriate orders and taking action in accordance therewith. As regards the disputed amounts, which the petitioner is entitled to receive in relation to supplies made by them or the respondents entitled to recover from the bills of the petitioner as against the alleged inferior quality of material supplied by the petitioner, it is directed that they may either revoke the remedy of arbitration proceedings in terms of the contract agreement or approach the competent civil Court for redressal of their grievances. No costs.

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N.V. RAMANA, J.

Date: July 28, 2004.

KSR

To

1. The Chairman, M/s. Bharat Heavy Electricals Limited, BHEL House, Siri Fort, New Delhi-110049.
2. The Executive Director,M/s. Bharat Heavy Electricals Limited, Tiruchirapalli, Tamil Nadu - 620 014.
3. The General Manager,M/s. Bharat Heavy Electricals Limited, Tiruchirapalli, Tamil Nadu-620 014.
4 The Dy. General Manager/SD, M/s. Bharat Heavy Electricals Limited, SDC & Admn.(MM/FB), Tirichiraplli, Tamil Nadu-620-014.